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November 4,2002

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Room CY-B-402
445 12th Street, S.W.
Washington, D.C. 20554

Re: Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in California, WC Docket No. 02-306

Dear Ms. Dortch:

Accompanying this letter is the Reply Filing In Support of the Application of SBC Communications Inc. ("SBC") for Provision of In-Region, InterLATA Services in California. This filing consists of (a) a stand-alone document entitled "Reply Comments of SBC In Support of In-Region InterLATA Relief In California," and (b) a Reply Appendix containing supporting material.

Because this reply filing contains confidential information, we are filing both confidential and redacted versions. Specifically, this reply filing includes:

a. One original of the portions of the filing that contain confidential information;

b. One original and four copies of the filing, redacted for public inspection; and

c. Five CD-ROM copies of the filing, redacted for public inspection.

REDACTED – For Public Inspection

Under separate cover, SBC is providing copies of this filing (redacted as appropriate) to Janice Myles, Policy and Program Planning Division, Wireline Competition Bureau, Federal Communications Commission, Room CY-B-402, 455 12th Street, S.W., Washington, D.C. 20544. SBC is also providing copies (redacted as appropriate) to the Department of Justice, the California Public Utilities Commission, and Qualex (the Commission's copy contractor).

All inquiries relating to access to any confidential information included with this filing (subject to the terms of any applicable protective order) should be addressed to:

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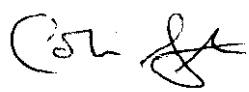
Thank you for your assistance in this matter. **If** you have any questions, please call me at 202-326-7968.

Yours truly,



Colin S. Stretch

Encs.

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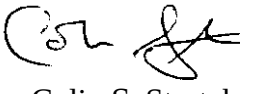

Colin S. Stretch

Encs.

REDACTED – For Public Inspection

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in California	WC Docket No. 02-306

REPLY COMMENTS OF SBC IN SUPPORT OF IN-REGION INTERLATA RELIEF IN CALIFORNIA

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November 4, 2002

EXECUTIVE SUMMARY

The vast majority of participants in this proceeding – 147 of the approximately 160 parties that filed comments – support SBC's Application to provide interLATA services in California. In addition to this overwhelming support, the Department of Justice ("DOJ") "recommends that the FCC approve SBC's application," subject to the resolution of a few minor issues addressed below. And the California Public Utilities Commission ("CPUC or "California PUC"), after a review of Pacific's **271** showing that was unprecedented in scope and depth, has found compliance with the competitive checklist, subject only to two narrow issues that, as DOJ has properly explained, do not affect this Commission's evaluation.

The support of these commenters comes as no surprise. SBC's Application provided comprehensive evidence that the local market in California is open to competition, a fact that CLECs themselves have proven by building up an extensive market presence that has continued to grow substantially even in the short time this Application has been pending. Pacific has also demonstrated that its wholesale performance has consistently met **or** exceeded fully 90 percent of the relevant standards and benchmarks established by the CPUC, a level of performance that has continued – and in some cases improved – in the past two months. And the Application made clear that consumers stand to benefit, as they have in other states with section 271 relief, from the additional competition that SBC's entry into the interLATA market will bring to all segments of the communications marketplace in California.

As it has in every section 271 proceeding to date, AT&T opposes SBC's bid to compete for its long-distance customers. Yet in doing so, AT&T, despite its years **of** experience in the local market in California and its huge and rapidly growing customer base in the state, finds itself in the awkward position of having no significant operational concerns to report. Those

complaints it does raise are both minor and misguided. Specifically, AT&T's allegation that Pacific fails to provide adequate access to information regarding alternative community listings rests on a mischaracterization of the ordering process, and it is in any case belied by AT&T's own success in creating listings for its end users that include such alternative community designations. Its contention that Pacific fails to provide a test environment for both the North and South regions of the state is without any practical significance, since the production environment is identical in both regions. And its complaints about the adequacy of the call centers SBC makes available to CLECs are belied not only by the extensive documentation that SBC provides regarding the purposes of those centers, but also by the fact that AT&T itself has sought to use these centers for plainly inappropriate purposes.

Equally unavailing are AT&T's attacks on Pacific's UNE pricing. The California PUC set TELRIC-based UNE rates in a comprehensive proceeding that was resoundingly affirmed by a federal district court. Of the multitude of findings and judgments the CPUC made in the course of that proceeding, AT&T challenges only two: the inclusion in Pacific's nonrecurring costs of capitalized costs associated with the installation of UNEs, and a separate charge for vertical switching features. Both are consistent with TELRIC. As the Commission's orders make clear, costs associated with the installation of UNEs – whether capitalized or not – should be recovered in nonrecumng rates. And because the costs of using vertical features – just like the costs of a switch – are incurred when the features are actually used, it is entirely appropriate to recover those costs in a separate, usage-based charge.

AT&T's challenge to Pacific's UNE rates thus comes down to the allegation that, because those rates were set approximately three years ago, they are too old. As the D.C. Circuit

recently explained, however, "the mere age of a rate" is insufficient to call it into question. Indeed, the Supreme Court has noted that "built-in lags in price adjustments" are a necessary and desirable aspect of the Commission's pricing rules.

To provide the Commission added comfort regarding Pacific's UNE rates, SBC has established that Pacific's UNE rates are lower on a cost-adjusted basis than the rates in place in Texas, and therefore fall within the Commission's benchmark analysis. While AT&T attempts to use this proceeding collaterally to attack the approved Texas rates, its complaints are better addressed to the Texas Commission, which is presently reviewing UNE rates. In any event, AT&T's substantive challenge to the Texas rates is wholly unpersuasive; although AT&T asserts that costs have declined in Texas since the rates were first established there. it bases this assertion on a misreading and misapplication of available cost data.

Unable to refute SBC's showing of checklist compliance, AT&T, joined on this point by several other commenters, claims that SBC's interLATA entry would be contrary to the public interest. This contention fails for at least two reasons. First, this Commissionpresumes that Bell company entry is in the public interest, provided the competitive checklist is satisfied and the local market is open to competition. That presumption is plainly warranted in this case, particularly in view of Pacific's CPUC-mandated performance assurance plan, which provides Pacific enormous incentives to continue to provide nondiscriminatory service after receiving section 271 relief.

Second, the so-called "evidence" on which commenters rely to rebut this public-interest presumption is largely irrelevant to the Commission's analysis. For the most part, they rely on outdated allegations – unaccompanied in most cases by any factual support – relating **to** retail

marketing practices, PIC administration, and other conduct unrelated to the openness of the local market to competition from CLECs. While some also object to Pacific's proposed scripts for joint marketing local and long-distance service, no one disputes that these scripts fall squarely within the "safe harbor" this Commission established in prior section **271** orders. Thus, in no case do these allegations establish that either the local or long-distance markets in California would be in any way harmed by SBC's interLATA entry.

Without any persuasive evidence of their **own** to rebut SBC's public-interest showing, commenters fall back on the assertion that the CPUC itself has expressed skepticism about the benefits **of** Pacific's entry into the intrastate, interexchange market. But the discussion to which these commenters point – which was appended to the CPUC's discussion **of** Pacific's compliance with the competitive checklist – does not represent the views of the California PUC. **As** DOJ points out, three of the five CPUC commissioners dissented from the discussion in question, and the CPUC has stated that it anticipates issuing a subsequent ruling on the matter in the near future.

More importantly, the CPUC's views on the public interest were set forth in connection with its analysis **of** a state law that the passage of the 1996 Act rendered irrelevant. As explained in SBC's opening brief, the 1996 Act gives this Commission exclusive authority to determine whether a Bell company satisfies the requirements for interLATA relief, and it makes clear that state-commission views on the public interest are entitled to no greater weight than the views of any other party. This Commission, moreover, has expressly concluded that state commissions have no authority to condition or deny Bell company long-distance entry (both interstate and intrastate). In order to reaffirm this Commission's exclusive jurisdiction over Bell company

entry into the market for in-region, interLATA services – and to ensure that the benefits of that entry to California consumers are not delayed by unnecessary and wasteful litigation – SBC urges the Commission once again to make unmistakably clear that, after this Commission has granted SBC long-distance authority under section 271, the CPUC may not condition or otherwise delay SBC's exercise of that authority.

The Commission should give no weight to commenters' efforts to capitalize on the **D.C.** Circuit's decision in Sprint v. FCC, by dressing-up their objections to Pacific's wholesale rates as "price squeeze" claims. Even assuming these claims bear on the openness of the local market – itself a highly dubious proposition – they involve pricing in markets (broadband Internet access, payphones, and high-capacity transmission) in which SBC faces fierce competition. SBC would have no power to recoup losses from a predatory strategy in these markets. The strategy hypothesized by these commenters is therefore flatly irrational. In any case, this Commission has set out clear standards of proof for reviewing price-squeeze claims in the section 271 context, and the commenters have not even tried to satisfy those standards.

AT&T's challenge to SBC's prospective compliance with section 272 is likewise misplaced. The long-distance affiliate SBC has in place in California is the exact same affiliate that is in place throughout the Southwestern Bell region. And SBC's showing of compliance with the section 272 safeguards in California is the same in all material respects as the showing it made in the five states in the Southwestern Bell region. Because the Commission approved that showing in each of those five states – and because no one has objected here to the way the section 272 affiliate is actually doing business in those states – it follows that SBC's showing here is sufficient. Indeed, if anything, SBC's showing of section 272 compliance in California is

stronger than it was in the southwestern Bell region, precisely because it builds on SBC's track record of compliance, as confirmed by a recently completed biennial audit.

The remaining issues commenters raise may be summarized and disposed of quickly:

- XO's challenge to Pacific's DS1 and DS3 rates rests exclusively on a claim – that the rates are higher than those in effect in another state – that the Commission has repeatedly said is insufficient to call into question the lawfulness of a rate.

- AT&T's challenge to Pacific's position on new combinations is directed at a negotiating position. Until that position is adopted by the CPUC, this Commission, or a federal court, Pacific will continue to provide new combinations in accordance with its existing agreements, which even AT&T concedes satisfy the requirements of the 1996 Act and the Commission's rules.

- Mpower's, Vycera's, and Telscape's late-filed challenges to Pacific's wholesale billing processes are based on substantial mischaracterizations of Pacific's bill format, and in any case fall well short of the standards to which the Commission has previously held commenters that seek to challenge an applicant's billing processes.

- XO's discussion of Pacific's performance in provisioning and maintaining DS1 loops paints an incomplete picture of that performance, which in fact is superior in most respects to the performance set out in other applications that have been approved.

- Telscape's late-filed complaint regarding shared transport ignores the fact that the Commission itself recently endorsed the CPUC order that established the offering on which SBC relies in the Application.

- As DOJ notes in regard to Checklist Item 11 (Local Number Portability), the suggestion that Pacific is required to implement a mechanized verification process – which the CPUC thought was necessary to show checklist compliance – has never been required of any 271 applicant, and Pacific has in any event implemented the requested process.

- PacWest's and RCN's contention that Pacific has denied them tandem rates for terminating traffic ignores the fact that the agreement language under which these carriers operate was voluntarily negotiated, and it expressly provides for such tandem rates only where the terminating carrier performs a tandem switching function, which neither PacWest nor RCN has suggested it does.

- The claim that Pacific must offer DSL transport at the wholesale discount under 47 U.S.C. § 251(c)(4) runs headlong into the Commission's conclusion in the

Arkansas/Missouri and Georgia/Louisiana orders that no such offering is presently required to demonstrate checklist compliance.

*****

The record in this proceeding demonstrates that SBC has done everything that Congress and this Commission have asked of it in implementing the local competition provisions of the 1996 Act and opening the local market in California. Under the standards set out in the Act and this Commission's prior orders, SBC should now be permitted to provide interLATA service in California. And, more importantly, California consumers should **now** be permitted to receive the benefits of increased competition in both the local and long-distance markets that will come with SBC's entry into long distance. The Commission should do its **part** to ensure that they do, by granting this Application.

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Arkansas/Missouri Order	Joint Application by SBC Communications Inc.. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region. InterLATA Services in Arkansas and Missouri, Memorandum Opinion and Order, 16 FCC Rcd 20719 (2001), appeal pending, AT&T Corp. v. FCC, No. 01-1511 (D.C. Cir.)
Five-State Order	Joint Application by BellSouth Corporation. et al.. for Provision of In-Region. InterLATA Services in Alabama. Kentuckv. Mississippi, North Carolina. and South Carolina, Memorandum Opinion and Order, 17 FCC Rcd 17595 (2002)
Georgia/Louisiana Order	Joint Application by BellSouth Corp., et al., for Provision of In-Region, InterLATA Services In Georgia and Louisiana, Memorandum Opinion and Order, 17 FCC Rcd 9018 (2002)
Kansas/Oklahoma Order	Joint Application by SBC Communications Inc., et al., for Provision **of** In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and Order, 16 FCC Rcd 6237 (2001), affd in part and remanded, Sprint Communications Co. v. FCC, 274 F.3d 549 (D.C. Cir. 2001)
Massachusetts Order	Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, Memorandum Opinion and Order, 16 FCC Rcd 8988 (2001), aff'd in part, dismissed in **part**, remanded in part, WorldCom, Inc. v. FCC, No. 01-1198 (and consolidated cases), 2002 WL 31360443 (D.C. Cir. Oct. 22,2002)
Michigan Order	Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543 (1997)

New Hampshire/Delaware Order	Application by Verizon New England. et al.. for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware, Memorandum Opinion and Order, 17 FCC Rcd 18660 (2002)
New Jersey Order	Application by Verizon New Jersey Inc., et al., for Authorization To Provide In-Region. InterLATA Services in New Jersey, Memorandum Opinion and Order, 17 FCC Rcd 12275 (2002), appeal pending, Manhattan Telecomms. Corp. v. FCC, No. 02-1237 (D.C. Cir.)
New York Order	Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999), aff'd, AT&T Corp. v. FCC, 220 F.3d 607 (D.C. Cir. 2000)
Oklahoma Order	Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934. as amended, To Provide in-Region, InterLATA Services In Oklahoma, Memorandum Opinion and Order, 12 FCC Rcd 8685 (1997)
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Rhode Island Order	Application by Verizon New England Inc., et al., for Authorization To Provide In-Region. InterLATA Services in Rhode Island, Memorandum Opinion and Order, 17 FCC Rcd 3300 (2002)

South Carolina Order	Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934. as amended, To Provide In-Region. InterLATA Services In South Carolina, Memorandum Opinion and Order, 13 FCC Rcd 539 (1997), aff'd, BellSouth Corn. v. FCC, 162 F.3d 678 (D.C. Cir. 1998)
Texas Order	Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000)
Vermont Order	Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Vermont, Memorandum Opinion and Order, 17 FCC Rcd 7625 (2002), appeal uending, AT&T Corp. v. FCC, No. 02-1152 (D.C. Cir.)
Virginia Order	Application by Verizon Virginia Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Virginia, Memorandum Opinion and Order, WC Docket No. 02-214, FCC 02-297 (rel. Oct. 30, 2002)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, **D.C. 20554**

In the Matter of` Application by SBC Communications Inc., Pacific Bell Telephone Company, and southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in California	WC Docket No. 02-306

REPLY COMMENTS OF SBC IN SUPPORT OF IN-REGION INTERLATA RELIEF IN CALIFORNIA

The vast majority of comments in this proceeding support SBC's application for interLATA relief in California. Several of these comments attest to Pacific's efforts to ensure positive working relationships with its wholesale customers and thereby to provide a hospitable climate for them to compete in the local market. Thus, for example, FONES4ALL, a resale-based CLEC serving the greater Los **Angeles** area, "has a positive, productive relationship with its Pacific Bell account team, who have gone the extra mile to support [its] needs," and it attests that "its ordering and provisioning issues are resolved in an expeditious manner." FONES4ALL Comments at 1. Likewise, New Access Communications "ha[s] been impressed with. . . [its] account manager," and is "favorably impressed with the quality of service provided [by Pacific] to date." Comments of New Access Communications.'

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[1] See also, e.g., Comments of the Broadband Institute of California at **3** ("SBC-Pacific Bell has demonstrated its continuing intent [to] facilitate competition in its local market. It has made demonstrable efforts to comply with a growing, shifting set of state imposed conditions. In the last four years, SBC Pacific Bell has complied with more than **250** conditions set by the CPUC to ensure that California's telecommunication market is open to competitors."); Comments of Donald Vial, Former President of the California Public Utilities Commission ("Pac

Others commenters look forward to the benefits that SBC's entry into interLATA services will bring to both local and long-distance markets in California. The Alliance for Public Technology, for example, "has every reason to believe that California customers, particularly low volume users, will reap the same gains from lower prices and bundled services that Arkansas, Missouri, Kansas, Oklahoma, and Texas residents are experiencing with SBC's entry into those long distance markets." Comments of the Alliance for Public Technology at 4. The Los Angeles Area Chamber of Commerce stresses that "[k]eeping telecom costs under control is a priority," and predicts that, once SBC enters the interLATA market, "competing companies would respond by reducing rates, introducing new technologies, and providing their customers with higher quality **of** service, which provides benefits to consumers and businesses alike." Comments of the Los Angeles Area Chamber of Commerce. Others echo that point, explaining that, if SBC is "allow[ed] . . . to enter the long distance market, the competition will force telecom providers to offer lower prices and promotional incentives." Comments of Advanced Fibre Communications.[2]

Bell has unbundled its service[s], priced them under CPUC regulation . . . for CLECs to compete, and now must have the opportunity to bundle and sell its own services, including inter-exchange services, to capture for consumers its economies of scale and scope.").

[2] See also, e.g., Comments of Sunrise Telecom ("[A]s a California-based company, we recognize the benefits of a truly open and competitive California[] long distance market."); Comments of Anthony Pescetti, Assembly Member - 10th District, California Legislature ("SBC Pacific Bell's entry will benefit California consumers . . . estimates by the Telecommunications and Research Action Center put the savings in California at up to $800 million a year."); Comments of Bill Morrow, California State Senator and Vice Chairman of the State Senate Energy, Utilities, and Communications Committee ("SBC Pacific Bell's long distance entry will spur competition. . . and add substantial consumer benefits. I know that consumers, businesses, and organizations in my district want to see those increased benefits."); Comments of the El Centro Chamber of Commerce and Visitors Bureau ("Approving Pacific Bell's application is the only way to give businesses and consumers the full and free choice that they want and deserve."); Comments of the Pasadena Chamber of Commerce and Civic Association ("Our

Still other commenters focus on Pacific's good corporate citizenship in California, emphasizing the positive contribution Pacific and its employees have made to communities throughout the state. See, e.g., Comments of Art Armendariz, Mayor, City of Delano ("SBC Pacific Bell has proven itself to be a good corporate citizen – providing thousands of jobs to Delano area residents and acting as a major sponsor and donor to countless community programs and services."); Comments of Cadence Industries ("Cadence Industries has had a long-term relationship with SBC Pacific Bell – the company has been a good, solid corporate citizen; it makes positive contributions to the state and our local economic efforts, and its employees are involved in the communities in which they live and work."); Comments of Advanced Fibre Communications ("SBC Pacific Bell has proven itself time and time again by investing back into their business and contributing to California's economy."); Comments of the Economic Development Alliance for Business ("SBC Pacific Bell . . . has a demonstrated record over many years of excellent support of the community both in their financial contributions and in the volunteerism and leadership of their employees."); Comments of the Honorable Heather Fargo, Mayor of Sacramento ("The City of Sacramento has benefited greatly through our relationship with SBC Pacific Bell and their employees. SBC Pacific Bell has been an outstanding corporate

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organization supports allowing more carriers to compete **in** [the long-distance] market with the expected result of lower prices and more choice for all consumers."); Comments of Jeffrey Cole, Director, UCLA Center for Communication Policy ("It is for the betterment of the telecommunication[s] industry, through increased competition and increased incentives to deploy new services, that I fully endorse and support SBC Pacific Bell's application, now pending before the [C]ommission."); Comments of Communications Workers of America at 1 ("Pacific's entry into the long-distance market in California is in the public interest. First, it will increase competition in the long-distance market, particularly for residential consumers. . . . Second, [it] will promote the important goal of the 1996 Telecommunications Act to create good, high-wage jobs in the telecommunications industry.").

citizen in our City. They have given generously to thousands of community programs and services. The employees of SBC Pacific Bell also contribute financially and volunteer with many nonprofit community-based organizations.").

Perhaps most significantly, the one commenter in this proceeding whose view is entitled to "substantial weight" under the statute – the Department of Justice – "recommends that the FCC approve SBC's application," subject only to a few minor issues addressed below. DOJ Eval. at 2. Like the CLECs' own successes in the local market, DOJ's carefully reasoned recommendation reflects the comprehensive steps Pacific has taken to satisfy the competitive checklist and to open the local market to competition.

DOJ's favorable review also speaks to the "tireless[]" efforts of the California PUC to ensure an open local market. Id. The vigilance of the CPUC is reflected not only in the unprecedented length, depth, and breadth of its section 271 review, but also in the comprehensive performance reporting and incentives plan it has put in place, as well as in its aggressive oversight **of** the terms and conditions on which Pacific fulfills its duties under the *1996* Act. In addition, even **as** the Commission reviews this Application, the California PUC is continuing to evaluate the record it has assembled in order to make the findings contemplated by section 709.2 of the California Public Utilities Code, with the express goal of "promptly complet[ing] its . . . appraisal."[3] Although this Commission has exclusive authority to grant or deny SBC's application to provide all interLATA services originating in California – such that

[3] See Assigned Commissioner's Ruling on Concluding the California Public Utilities Code Section 709.2 Inquiry, Rulemaking on the Commission's Own Motion to Govern Open Access, R.93-04-003, at 2 (Cal. PUC Oct. 4, 2002), Attach. 3 to Ex Parte Letter from Colin S. Stretch on behalf of SBC to Marlene Dortch, FCC (Oct. 7, 2002)).

any purported parallel authority under state law would be either superfluous or preempted, depending on whether it was granted or denied – the CPUC's ongoing efforts should give the Commission comfort that the CPUC is moving quickly **to** eliminate even the appearance of a conflict between federal and state law.

Particularly in light of DOJ's and the CPUC's unbiased, favorable evaluations of the Application, the Commission should be highly skeptical of the self-interested efforts by AT&T and others to oppose it. **As** Chairman Powell has recognized, "[t]here will never be a 271 . . . to which there will not be a community of competitive entrants . . . like AT&T who will not scream that it was premature. Why? Because as far **as** they're concerned entry will never be right."[4] The time is right in California. The Application should be granted.

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The remainder of these reply comments are organized **as** follows: Part I reviews the state of local competition in California and explains that, in view of CLEC successes in the local market, Pacific is entitled to a presumption that the local market is open and the competitive checklist is satisfied. Part II responds to challenges to Pacific's showing of compliance with Checklist Item 2, addressing in particular issues related to OSS, pricing, and UNE combinations. Part III examines the public-interest standard set out in section 271, and makes clear that SBC satisfies that standard as the Commission has articulated it in prior section 271 orders. Part IV discusses SBC's showing of compliance with section 272, and demonstrates that AT&T's challenge to that showing is based on a misleading description **of a** consulting report that is

[4] Powell Defends Stance on Telecom Competition, Communications Daily, May 22, 2001.

presently the subject of litigation before the CPUC. Part V addresses CLECs' remaining challenges – including claims regarding Checklist Items 4 (unbundled loops), 5 (local transport), 11 (local number portability), 13 (reciprocal compensation for the exchange of local traffic), and 14 (resale) – and explains in each case that commenters have failed to rebut SBC's showing of compliance with the requirements of the 1996 Act.

I. IN LIGHT OF THE EXTENSIVE LOCAL. COMPETITION IN CALIFORNIA, THE COMMISSION SHOULD PRESUME THE LOCAL MARKET IS OPEN AND THE CHECKLIST IS SATISFIED

SBC's Application established that CLECs in California have used all three modes of entry contemplated by the 1996 Act to build-up a market presence that far exceeds that in place in New York or Texas – the *two* most populous states for which the Commission has reviewed section 271 applications previously – at the time applications for those states were filed. See, e.g., J.G. Smith Aff. Attach. D (App. A, Tab 22). Since the date of the Application, moreover, local competition in California has continued to expand. In the last *two* months, for example, competitors in California have added approximately 139,000 new lines using UNE-P alone. See J.G. Smith Reply Aff. ¶ 2 (Reply App., Tab 16).

Pointing to outdated and incomplete reports regarding competitive entry in California, a few commenters nevertheless suggest that competitive entry in California is stalled. See Sprint Comments at 10-13; AT&T Comments at 82-83; Vycera Comments at 26-27; PacWest Comments at 14-15.[5] These commenters do not, however, take issue with Pacific's methodologies for estimating CLEC lines. Nor has any party "uttered. . . a peep in protest,

[5] See also J.G. Smith Reply Aff. ¶¶ 4-5 (demonstrating that the reports on which these commenters rely are unreliable). References to "PacWest" herein refer to the Joint Comments of PacWest Telecomm., Inc., RCN Telecom Services, Inc., and U.S. Telepacific Corp.

correction or qualification" of the line counts SBC has attributed to individual CLECs. Sprint Communications Co. v. FCC, 274 F.3d 549,562 (D.C. Cir. 2001); see J.G. Smith Aff. Attach. E (documenting the extent of individual carriers' competitive presence in California). Because SBC's estimates of total competition in the state are derived in the same manner as those undisputed individual CLEC line counts, SBC's estimates are by far the most reliable information before the Commission. And those figures establish beyond legitimate dispute that local competition is thriving in California.

Indeed, in light of the extensive competition in California across all modes of entry, SBC is entitled to a presumption that the local market is open and the competitive checklist is satisfied. Simply put, the local market is at least as open in Califomia as it was in any section 271-approved state at the time of application, as evidenced by the number of UNEs ordered and services provided by CLECs. See J.G. Smith Aff. Attach. D. The presumption must therefore be that the issues commenters have raised in this proceeding are not competition-affecting, and are accordingly insufficient to call into question Pacific's compliance with the competitive checklist.

DOJ echoes that point. As DOJ explains, "[i]n assessing whether the local markets in a state are fully and irreversibly open to competition, the Department looks first to the actual entry in a market." DOJ Eval at 5. And as DOJ further emphasizes, the evidence regarding the availability of such entry is abundant in this case:

- "The amount of entry by facilities-based CLECs . . . , and the absence of evidence that entry. . . has been unduly hindered by problems . . . leads the Department to conclude that opportunities to serve both [residential and business] customers via facilities are available" in California. Id. at 7.

- "[D]ue in part to the paucity **of** CLEC complaints regarding resale," DOJ concludes "that SBC has fulfilled its obligations to open the resale mode of entry to competition for both residential and business customers in California." Id.

- To the extent there are "lower levels of [UNE-P] penetration," it "may reflect the higher UNE pricing that was in effect for most of the period preceding this application as opposed to the UNE prices on which the application is based." Id-

Thus, as DOJ explains, CLECs have proven their ability to compete on a facilities basis in the local exchange market in California, and they have not even suggested that they cannot do so over resale. And, as noted above, in the last two months for which data are available, CLECs capitalizing on the CPUC's interim rate order have increased their UNE-P penetration by approximately 139,000 lines. See J.G. Smith Reply Aff. ¶ **2.** This latest surge provides further evidence – if any were necessary – that the California local market is open to competition.

II. PACIFIC SATISFIES CHECKLIST ITEM 2

In a comprehensive discussion spanning more than 90 pages, the California PUC unequivocally concluded that Pacific satisfies the requirements of Checklist Item 2.[6] DOJ echoes that conclusion, subject only to clarification of Pacific's offer to limit any prospective true-up of its UNE-P rates, which we provide below. **As** we also demonstrate below, the issues raised by commenters in these areas fall well short of calling into question the CPUC's and DOJ's conclusions.

A. Nondiscriminatory Access to OSS

The Application demonstrates that Pacific offers competing carriers nondiscriminatory access to its OSS. See SBC Br. at 37-50; Huston/Lawson Joint Aff. (App. A, Tab 11). The

[6] See Decision Granting Pacific Bell Telephone Company's Renewed Motion for an Order That It Has Substantially Satisfied the Requirements of the 14-Point Checklist in § 271 of the Telecommunications Act of 1996 and Denying That It Has Satisfied § 709.2 of the Public Utilities Code, Rulemaking on the Commission's Own Motion to Govern Open Access, D.02-09-050, at 29-120 (Cal. PUC Sept. 19,2002) ("CPUC Final Decision"), Attach. 1 to Ex Parte Letter from Geoffrey M. Klineberg on behalf of SBC to Marlene Dortch, FCC (Sept. 30,2002).